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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/667,581 | 09/22/2003 | Simon R. Hakiel | GB920030085US1 | 9639 |

25259 7590 04/27/2007
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| EXAMINER |
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BELANI, KISHIN G

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| ART UNIT | PAPER NUMBER |
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2109

| SHORTENED STATUTORY PERIOD OF RESPONSE | NOTIFICATION DATE | DELIVERY MODE |
|--|-------------------|---------------|
| 3 MONTHS | 04/27/2007 | ELECTRONIC |

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Notice of this Office communication was sent electronically on the above-indicated "Notification Date" and has a shortened statutory period for reply of 3 MONTHS from 04/27/2007.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

RSWIPLAW@us.ibm.com

Office Action Summary

Application No.

10/667,581

Applicant(s)

HAKIEL ET AL.

Examiner

Kishin G. Belani

Art Unit

2109

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 9/22/2003.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Information Disclosure Statement

The information disclosure statement submitted on 09-22-2003 has been considered by the Examiner and made of record in the application file.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 13 is rejected under 35 U.S.C. 101 because the claimed inventions are directed to non-statutory subject matter.

Consider **claim 13**, "computer readable medium" in accordance with the applicant's specification may be "transmittable to a computer system, via a modem or other interface device, over either a tangible medium, including but not limited to optical or analog communications lines, or intangibly using wireless techniques, including but not limited to microwave, infrared or other transmission techniques" (see paragraph 0045). This subject matter is not limited to that which falls within a statutory category of invention because it is not limited to a process, machine, manufacture, or a composition of matter. Instead it may include a form of energy. Energy does not fall within a statutory category since it is clearly not a series of steps or acts to constitute a process,

Art Unit: 2109

not a mechanical device or combination of mechanical devices to constitute a machine, not a tangible physical article or object which is some form of matter to be a product and constitute a manufacture, and not a composition of two or more substances to constitute a composition of matter.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-7 and 9-13 are rejected under 35 U.S.C. 102(e) as being anticipated by **Wilson et al. (U.S. Patent Publication # 6,714,976 B1)**.

Consider **claim 1**, Wilson et al. clearly show and disclose a method of filtering one or more events associated with one or more computer environments for display in a performance monitoring system, wherein each of the one or more events is generated when a threshold associated with a first parameter is met (Fig. 14, flowchart blocks 322 and 324 that show and disclose a filtering process for collected event data by comparing the data with pre-defined rules, then continuing to process the filtered data only; column 18, lines 40-42 that disclose how the events related to business

Art Unit: 2109

transactions are processed by the filtering process described in the flowchart; column 6, lines 27-45 that describe a second filtering process for monitoring the performance of various computer systems in a network by disclosing that users can select and specify in the configuration plug-in modules which events to monitor by the monitoring agents; Abstract; Fig. 1; column 4, lines 31-50 that show and disclose the monitoring environment with a multiplicity of computer environments (server s1 block 20 and server s2 block 22 and monitoring agents 30-40); Fig. 13 and column 17, lines 8-14 that show and disclose the corresponding set up for business transaction monitoring events; Fig. 7; column 10, lines 39-48; column 14, lines 2-7 that disclose defining the trigger events and collecting diagnostic information for performance monitoring of computer environments; Fig. 14; column 18, lines 1-8 that show and disclose the corresponding details for business transaction monitoring events), the method comprising the steps of: receiving a filter representing at least one of: a set of the one or more computer environments or at least one second parameter (Fig. 1, EM Console block 42 that receives event triggered data from EM agents 30-40; column 6, lines 42-45 that disclose the plug-in modules for filtering and capturing the event triggered data and sending the captured data to the EM Console; Table in Fig. 11 that shows the type of data collected including system component 268 as one or more computer environments and threshold 264 as a second parameter); and in response to the receiving step, filtering the one or more events (Fig. 14, blocks 322 and 324 that disclose comparing collected data with pre-defined rules to filter out the data for events that are not within the scope of the defined rules).

Consider **claim 2**, and **as applied to claim 1 above**, Wilson et al. clearly show and disclose a method of displaying the filtered one or more events (Fig. 1, EM Console block 42 and Monitoring Station 24; column 4, lines 20-30 and 63-67 that show and disclose monitoring and managing of a distributed application, with an application program running on console 42 that displays event-triggered monitored data at the component and at the enterprise level).

Consider **claim 3**, and **as applied to claim 2 above**, Wilson et al. clearly show and disclose a method wherein the filter is received from and the one or more filtered events are displayed on, a single display window (Table in Fig. 11; column 13, lines 49-63 that describe the event-triggered data being collected and displayed as shown on a single display window).

Consider **claim 4**, and **as applied to claim 2 above**, Wilson et al. clearly show and disclose a method wherein for each of the filtered one or more events, the displaying step further comprises the step of displaying a first set of information associated with: an event identifier (Fig. 11, Exception ID column 262; column 13, lines 64-66 that disclose an event identifier field 262);
the associated one or more computer environments (Fig. 11, Components Type field in column 266; column 14, lines 7-10 that describe the data item associated with column 266 of the table in Fig. 11);

Art Unit: 2109

the first parameter (Fig. 11, System Components for Data Gathering column 268; column 14, lines 16-34 that describe the data item associated with column 268 of the table in Fig. 11);

the second parameter (Fig. 11, Threshold column 264; column 13, lines 66-67 and column 14, lines 1-7 that describe the data item associated with column 264 of the table in Fig. 11); and

a second parameter identifier (Fig. 11, Data ID field of column 266; column 14, lines 7-15 that describe the data item associated with column 266 of the table in Fig. 11).

Consider **claim 5**, and **as applied to claim 4 above**, Wilson et al. clearly disclose a method wherein the first set of information is associated with a second set of information (column 15, lines 13-15 which disclose that the data contained in table 260 of Fig. 11 (first set of information) includes configuration information (second set of information) of the computer system being monitored).

Consider **claim 6**, and **as applied to claim 5 above**, Wilson et al. clearly disclose a method wherein the second set of information comprises information associated with the configuration of the one or more computer environments (column 15, lines 13-15 which disclose that the data contained in table 260 of Fig. 11 (first set of information) is associated with the configuration information (second set of information) of the computer system being monitored).

Consider **claim 7**, and **as applied to claim 5 above**, Wilson et al. clearly disclose a method wherein the second set of information comprises information associated with the threshold (column 13, lines 64-67 and column 14, lines 1-7 which disclose that the second set of information (column 264 of Fig. 11) comprises information associated with the threshold).

Consider **claim 9**, and **as applied to claim 1 above**, Wilson et al. clearly disclose a method wherein the second parameter represents a resource (column 6, lines 51-56 which disclose that the second parameter may be available memory space (a resource); column 12, lines 5-9 which disclose that these parameters can be resource metrics (CPU and memory usage) or network parameters such as latency).

Consider **claim 10**, and **as applied to claim 1 above**, Wilson et al. clearly disclose a method wherein the second parameter represents a time (column 12, lines 5-9 which disclose that these parameters can be network latency parameters, i.e. time; column 14, lines 2-7 that also discloses time as being the second parameter to trigger an event and subsequent monitored data capture).

Consider **claim 11**, and **as applied to claim 1 above**, Wilson et al. clearly disclose a method wherein each of the one or more computer environments comprises at least one computer system (Fig. 1, server s1 block 20 and server s2 block 22 as

Art Unit: 2109

examples of one or more computer environments with at least one computer system; column 4, lines 20-30 that disclose various components of the invention).

Consider **claim 12**, Wilson et al. clearly disclose an apparatus for filtering one or more events associated with one or more computer environments for display in a performance monitoring system, wherein each of the one or more events is generated when a threshold associated with a first parameter is met (Fig. 14, flowchart blocks 322 and 324 that show and disclose a filtering process for collected event data by comparing the data with pre-defined rules, then continuing to process the filtered data only; column 18, lines 40-42 that disclose how the events related to business transactions are processed by the filtering process described in the flowchart; column 6, lines 27-45 that describe a second filtering process for monitoring the performance of various computer systems in a network by disclosing that users can select and specify in the configuration plug-in modules which events to monitor by the monitoring agents; Abstract; Fig.1; column 4, lines 31-50 that show and disclose a monitoring apparatus with a multiplicity of computer environments (server s1 block 20 and server s2 block 22 and monitoring agents 30-40); Fig. 13 and column 17, lines 1-8 show and disclose the corresponding set up for business transaction monitoring events; Fig. 7; column 10, lines 39-48; column 14, lines 2-7 that disclose defining the trigger events and collecting diagnostic information for performance monitoring of computer environments; Fig. 14; column 18, lines 1-8 that show and disclose the corresponding details for business transaction monitoring events), the apparatus comprising:

Art Unit: 2109

means for receiving a filter representing at least one of: a set of the one or more computer environments or at least one second parameter (Fig. 1, EM Console block 42 that receives event triggered data from EM agents 30-40; column 6, lines 42-45 that disclose the plug-in modules for filtering and capturing the event triggered data and sending the captured data to the EM Console; Table in Fig. 11 that shows the type of data collected including system component 268 as one or more computer environments and threshold 264 as a second parameter); and

means, responsive to the receiving means, for filtering the one or more events (Fig. 14, blocks 322 and 324 that disclose comparing collected data with pre-defined rules to filter out the data for events that are not within the scope of the defined rules).

Consider **claim 13**, Wilson et al. clearly disclose a computer program product tangibly embodied in a computer readable medium to, when loaded into a computer system and executed, cause said computer to perform the claimed invention (claim 23 and other claims dependent on it that also claim machine executable code for the claimed invention; column 3, lines 22-33 that disclose different functions coded within the machine executable code that when loaded into a computer system and executed, cause said computer to perform the claimed invention).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 2109

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Wilson et al. (U.S. Patent Publication # 6,714,976 B1)** in view of **Sylor et al. (U.S. Patent Application Publication # 2002/0049838 A1)**.

Art Unit: 2109

Consider **claim 8**, and **as applied to claim 1 above**, Wilson et al. clearly show and disclose the claimed invention except disclosing that the first parameter represents a severity level.

In the same field of endeavor, Saylor et al. clearly show and disclose that the first parameter represents a severity level (Fig. 7, exception event table 62, column labeled "Severity"; paragraph 0189 that discloses severity of the alert).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to disclose that the first parameter represents a severity level, as taught by Saylor et al. in the method of Wilson et al., so that the importance of handling more critical events can be presented to the person monitoring the system.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

US Patent Application Publication # 2002/0198984 A1, inventors: Goldstein et al., filed 10/19/2001

US Patent Application Publication # 2004/0107278 A1, inventors: Emaru et al., filed 9/10/2003

Any response to this Office Action should be **faxed to (571) 273-8300 or mailed to:**

Art Unit: 2109

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Art Unit: 2109

Hand-delivered responses should be brought to

Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Kishin G. Belani whose telephone number is (571) 270-1768. The Examiner can normally be reached on Monday-Thursday from 6:30 am to 5:00 pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Rafael Perez Gutierrez can be reached on (571) 270-1767 or (571) 272-7915. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free) or 703-305-3028.


Art Unit: 2109

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist/customer service whose telephone number is (571) 272-2600.

Kishin G. Belani

K.G.B./kgb

April 23, 2007


RAFAEL PEREZ-GUTIERREZ
SUPERVISORY PATENT EXAMINER
4/24/07